

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DUKE)	
ENERGY KENTUCKY, INC. FOR: 1) AN)	
ADJUSTMENT OF THE ELECTRIC RATES; 2))	
APPROVAL OF AN ENVIRONMENTAL)	
COMPLIANCE PLAN AND SURCHARGE)	CASE NO.
MECHANISM; 3) APPROVAL OF NEW)	2017-00321
TARIFFS; 4) APPROVAL OF ACCOUNTING)	
PRACTICES TO ESTABLISH REGULATORY)	
ASSETS AND LIABILITIES AND 5) ALL OTHER)	
REQUIRED APPROVALS AND RELIEF)	

ORDER

On September 1, 2017, Duke Energy Kentucky, Inc. (“Duke Kentucky”) electronically filed a motion, pursuant to 807 KAR 5:001, Section 13 and KRS 61.878 requesting that the Commission grant confidential protection to (1) attachment WDW-2 to the Direct Testimony of William Don Wathen, Jr.; (2) Schedule G-3 filed with the Application, and attachments TS-1(a)–(g), TS-6, TS-8(a)–(c), and TS-11. On January 12, 2018, Duke Kentucky filed supplements to the documents and materials for which it sought confidential treatment in its September 1, 2017 motion and similarly requested that those supplements be treated as confidential.

Duke Kentucky asserted that attachment WDW-2 to the Direct Testimony of Mr. Wathen contains a survey compiled by the Regulatory Research Association (“RRA”) summarizing cost recovery mechanisms for utilities across the country. Duke Kentucky argued that the document is subject to copyright laws and is the intellectual property of RRA, and thus, Duke Kentucky was only permitted to provide the information to the

Commission with the express consent of RRA and subject to its agreement to tender the information under seal and subject to a motion for confidential treatment. Among other things, Duke Kentucky asserted that if the information was not retained in a confidential manner that RRA may prohibit Duke Kentucky from using such information in the future. Thus, Duke Kentucky argued that the attachment should be treated as confidential pursuant to KRS 61.878(1)(c) and (k).

Schedule G3 contains executive compensation by title as required by 807 KAR 5:001. Duke Kentucky claims that with the exception of information regarding the CEO, which is publically disclosed in corporate filings, executive compensation information is kept in a confidential and proprietary manner. Duke Kentucky asserted that disclosure would provide competitors with tremendous insight into its compensation philosophies, policies and practices and that allowing public access to the information might allow competitors to poach Duke Kentucky's talent. Thus, Duke Kentucky argued that the attachment should be treated as confidential pursuant to KRS 61.878(1)(c).

The attachments to the testimony of Thomas Silinski for which Duke Kentucky has requested confidential treatment, pertain generally to its compensation policies and practices. Specifically, the attachments consist of the following materials:

1. TS-1(a)–(g) contains a number of Duke Kentucky's compensation policies, including its (a) 2017 Compensation Guidelines and Administration Policy; (b) Change of Schedule; (c) ECA Guidelines; (d) Exempt Supplemental Pay Policy; (e) Higher Class Premium Pay; (f) Shift Differential Policy, and; (g) Rotating Shift Guideline;

2. TS-6 is a comparison of the average base and total compensation for several Duke Energy exempt positions to those of similar companies based on applicable external survey data;

3. TS-8(a)–(c) includes its 2017 Short-Term Incentive Plan and Union Employee Incentive Plans, 2017 Restricted Stock Award Plan and 2017 Executive Long-Term Incentive Plan; and

4. TS-11 contains its Benefit Plan Design and Employee Cost Summary Grid – 2017, which Duke Kentucky described as a detailed summary of the key benefits available to Duke Energy’s employees.

Duke Kentucky argued that those materials, taken together, represent the accumulation of decades of “best practices” in human capital management and that their disclosure would provide competitors insight into Duke Kentucky’s practices and an advantage in poaching and recruiting employees. Thus, Duke Kentucky argued that those attachments to the testimony of Thomas Silinski should be treated as confidential pursuant to KRS 61.878(1)(c).

The Commission is a public agency subject to Kentucky's Open Records Act, which requires that all public records “be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884.”¹ The exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.² The party requesting that materials be treated confidentially has the burden of establishing

¹ KRS 61.872(1).

² See KRS § 61.871.

that one of the exceptions is applicable.³ In determining whether materials should be exempt from disclosure, the Commission must balance the potential harm from disclosure with “the effect of protecting a given document from scrutiny by the public and potential intervenors.”⁴

Having carefully considered the motions and the materials at issue, the Commission finds that the designated portions of attachment WDW-2 to the Direct Testimony of William Don Wathen, Jr.; and attachments TS-1(a)–(g) and TS-8(a)–(c) to the testimony of Thomas Silinski meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1) and 807 KAR 5:001, Section 13. The Commission finds that those designated materials and information should not be placed in the public record or made available for public inspection for a period of 20 years, unless and until the Commission orders otherwise. The Commission finds attachment TS-6 and attachment TS-11 to the testimony of Thomas Silinski, which contain anonymized and average information as well as information from outside surveys, do not meet the criteria for confidential treatment pursuant to KRS 61.878 and 807 KAR 5:001, Section 13.

Schedule G-3 filed with the Application and supplements thereto provide basic information regarding executive and officer compensation by position. The Commission has generally held that executive officer salary and compensation does not meet the criteria for confidential treatment, because the salaries are included as an expense in

³ 807 KAR 5:001, Section 13(2)(c).

⁴ *Southern United Medigroup, Inc. v. Hughes*, 952 S.W.2d 195, 199 (Ky. 1997), *abrogated on other grounds by Hoskins v. Maricle*, 150 S.W.3d 1 (Ky. 2004).

base rate calculations and because certain executive salary information must be disclosed to the public in any case in other regulatory filings.⁵ Thus, the Commission finds that Duke Kentucky failed to establish that Schedule G-3 filed with the Application or any supplements thereto meet the criteria for confidential treatment to the extent that the compensation information for that executive or officer has previously been disclosed publically or any portion of the compensation for that executive or officer is attributed to Kentucky.

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's September 1, 2017, and January 12, 2018 motions for confidential treatment are hereby granted, in part, and denied, in part.

2. The designated portions of attachment WDW-2 to the Direct Testimony of William Don Wathen, Jr; and attachments TS-1(a)–(g) and TS-8(a)–(c) to the testimony of Thomas Silinski for which confidential treatment was requested shall not be placed in the public record or subject to public disclosure for a period of 20 years, unless and until the Commission orders otherwise.

3. The portions of Schedule G-3 filed with the Application and supplements thereto providing compensation information for officers and executives whose compensation or any portion thereof was not jurisdictionally attributed to Kentucky by Duke Kentucky and not previously released publically meet the criteria for confidential treatment pursuant to KRS 61.878(1) and 807 KAR 5:001, Section 13 and, therefore, shall be exempt from public disclosure. The remaining portions of Schedule G-3 and any

⁵ See Case No. 2012-00221, *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky. PSC Sept. 11, 2013) at 1 (denying a request to treat executive salary and benefits as confidential for those reasons).

supplements do not meet the criteria for public disclosure and, therefore, shall be made available to the public. Within 30 days from the date of this order, Duke Kentucky shall file into the public record Schedule G-3 and any supplements with only the information for which confidential treatment was granted redacted. That redacted content for which confidential treatment shall not be placed in the public record or subject to public disclosure for a period of ten years.

4. Attachment TS-6 and attachment TS-11 to the testimony of Thomas Silinski and any supplement thereto do not meet the criteria for confidential treatment pursuant to KRS 61.878 and 807 KAR 5:001, Section 13, and therefore, shall be made available to the public.

5. The Commission shall not place the materials into the public record for a period of 30 days pursuant to 807 KAR 5:001, Section 13(5).

6. The use of materials granted confidential treatment in any Commission proceeding shall comply with 807 KAR 5:001, Section 13(9).

7. Duke Kentucky shall inform the Commission if the materials granted confidential protection become publicly available or no longer qualify for confidential treatment.

8. If a non-party to this proceeding requests to inspect materials granted confidential treatment by this order, Duke Kentucky shall have 20 days from receipt of written notice of the request to demonstrate that the materials are exempt from disclosure, pursuant to KRS 61.878. If Duke Kentucky is unable to make such demonstration or the non-party establishes that an exemption does not apply, the requested materials shall be made available for inspection.

9. Nothing in this Order shall be construed as preventing the Commission from revisiting the confidential treatment of materials and information.

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By the Commission

ENTERED
MAY 03 2018
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2017-00321

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